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**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re RICHARD O. et al., Persons Coming
Under the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Plaintiff and Respondent,

v.

MARIAH A.,

Defendant and Appellant.

F065415

(Super. Ct. Nos. JD127364, JD127365,
JD127366, JD127367, JD127368,
JD128367)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Kern County. Louie A. Vega,
Judge.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County
Counsel, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J., and Peña, J.

INTRODUCTION

Mariah A. (mother) appeals from the juvenile court's jurisdictional and dispositional order finding that the Indian Child Welfare Act (ICWA) does not apply in this case. We reject mother's contention and affirm the juvenile court's order.

FACTS AND PROCEEDINGS

Mother and her husband, M.A., were arrested and charged with willful cruelty to a child (Pen. Code, § 273a, subd. (a)). On September 19, 2011, the Kern County Department of Human Services (department) filed separate petitions pursuant to Welfare and Institutions Code section 300¹ as to Richard O., Jr. (eight years old), David O. (seven years old), William O. (six years old), Jeremiah O. (four years old), and Gabriella A. (one year old). The petitions alleged that mother failed to protect the children from M.A., M.A. committed domestic violence on mother, and was verbally abusive to the older children. The older children's father was Richard O., Sr., now deceased.² An additional allegation was made concerning William O. that he was suffering emotional abuse inflicted by M.A. and that William O. had begun to hit himself in the face with a shoe as a result of M.A.'s abuse.³ In March 2012, a petition was filed for Michael A. who had just been born.

On September 20, 2011, mother signed a parental notification of Indian status form. Mother indicated she was of Cherokee and Blackfoot ancestry. At a hearing on September 20, 2011, mother told the court that she did not know if Richard O., Sr. had any Indian ancestry. The parties stipulated that mother would testify that she and Richard

¹ All statutory references are to the Welfare and Institutions Code unless otherwise designated.

² Richard O., Sr. died in 2006.

³ Subsequent amended petitions not relevant to the issues raised in this appeal were filed by the department.

O., Sr. were married and residing together when she gave birth to Richard, David, William, and Jeremiah. Richard O., Sr. held these children out as his own. Mother also had an exclusive relationship with M.A. and was married to him when she conceived Gabriella.

Notices were sent pursuant to the ICWA to the United Keetoowah Band of Cherokee Indians, the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, the Blackfeet Tribe of Montana, the Secretary of the Interior Bureau of Indian Affairs (BIA), and the Pacific Regional Office of the Bureau of Indian Affairs.⁴ Notices were also sent to mother and M.A. The notices for the four older children listed Richard O., Sr. as the other alleged father and stated it was unknown whether he had Indian ancestry or attended an Indian school. In October 2011, letters were received by the department from the United Keetoowah Band of Cherokee Indians, the Blackfeet Tribe, the BIA, and the Cherokee Nation indicating that Richard, David, William, Jeremiah, and Gabriella were not Indian descendants.

At a hearing on October 27, 2011, the juvenile court found that proper notice had been made pursuant to the ICWA. In November 2011, the department sent a second round of notices to the one tribe that had not previously responded to the department, the Eastern Band of Cherokee Indians. Notices were also sent to the BIA, the Pacific

⁴ M.A., Gabriella A.'s father, signed a declaration stating that he had no Indian ancestry. Michael A., also known as Baby Boy A., allegedly had a different biological father, J.T., not M.A. J.T. filed a declaration that he had no known Indian ancestry. J.T. was later found to be Michael A.'s biological father. Notices were sent pursuant to the ICWA for Michael A. to the same four Indian tribes as were sent for the other children as well as the Secretary of the Interior and the BIA. Neither the BIA nor the four tribes found that Michael A. had any Indian ancestry. The juvenile court found that Michael A. did not have Indian ancestry and that the ICWA was inapplicable to him. Mother's ICWA contention on appeal only involves her four oldest children whose father was Richard O., Sr.

Regional Office of the Bureau of Indian Affairs, mother, and M.A. Richard O., Sr. was again listed as the other alleged father as to the four older children.

The BIA sent a letter dated November 30, 2011. This letter did not indicate that the children had Indian ancestry. The Family Support Services of the Cherokee Boys Club sent a letter on January 10, 2012, that the children were not registered or considered members of their tribe. On December 19, 2011, the juvenile court found that the tribes and BIA had received appropriate notice pursuant to the ICWA.

At the jurisdiction hearing, which was conducted on February 2, 2012, and continued to February 24, 2012, the juvenile court found that there was no evidence to establish the children fell within the provisions of the ICWA and that it was not applicable in this proceeding. The court found the allegations of the amended petition true. The matter was continued for the adoption of an appropriate case plan after evaluation by a psychologist. Mother was granted weekly visitations with the children.

On May 30, 2012, the department filed a photographic copy of the death certificate of Richard O., Sr., who died in Pima County, Arizona in 2006. The printed form of the certificate had Box 4A which stated: "RACE (e.g. white, black, American Indian, (specify tribe) etc. ¶ SPECIFY:" Written in the box for Richard O., Sr.'s race was "WHITE."

At the disposition hearing on July 5, 2012, the court ordered the removal of the children from their parents' custody. The court found that the parents had made minimal progress toward alleviating or mitigating the causes for the dependency proceeding. The court ordered reunification services for mother for six months. Mother was ordered to participate in counseling for parent training, a 26-week program to learn how to protect her children, and individual counseling to address her self-esteem, codependency, mental health issues, and domestic violence as a victim. Mother was also ordered to comply with all medication recommendations by mental health professionals. M.A. was denied

reunification services. Mother was permitted weekly, supervised visitation with the children.

COMPLIANCE WITH ICWA

Mother contends the department's ICWA notice was deficient because it failed to contain more identifying information for Richard O., Sr., the father of the four older children. We disagree.

Congress passed the ICWA to promote stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and to effectuate the placement of such children in foster or adoptive homes that will reflect the unique values of Indian culture. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195 (*Levi U.*).

Social workers have an affirmative and continuing duty to inquire whether a child in a section 300 proceeding is or may be an Indian child. If the social worker has reason to know an Indian child is involved, the social worker is required to make further inquiry by interviewing parents, extended family members, and the Indian custodian. Neither the court nor a social services department, however, is required to conduct a comprehensive investigation into the minor's Indian status. (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39 (*C.Y.*); *In re S.B.* (2005) 130 Cal.App.4th 1148, 1161; *Levi U.*, *supra*, 78 Cal.App.4th at p. 199.) Neither the ICWA nor other rules and regulations create a duty by the department or the court to "cast about, attempting to learn the names of possible tribal units to which to send notices, or to make further inquiry with BIA." (*Levi U.*, *supra*, 78 Cal.App.4th at p. 199.)

Although extensive information was provided concerning mother's family history, as well as that of M.A., mother contends that almost no information was provided concerning Richard O., Sr. The ICWA notice as to Richard O., Sr., stated that it was unknown whether he had Indian ancestry. We note that although she was married to

Richard O., Sr. and had four children by him, mother provided no information about him to the department. Richard O., Sr.'s name was listed in the appropriate ICWA notices to the tribes and the BIA. If Richard O., Sr. had any Indian ancestry, presumably there would have been a request for further information from one of the tribes or the BIA. There was none.

The court in *C.Y.* found no affirmative duty by the social services department or the juvenile court to make further inquiry into the Indian status of a dead parent by questioning the dead parent's relatives concerning Indian ancestry. *C.Y.* further noted that the court could hardly make inquiries of persons not parties to the proceeding, or of a deceased parent. The initial inquiry need only be made to the parents. (*C.Y.*, *supra*, 208 Cal.App.4th at p. 42.) We apply the reasoning and holding in *C.Y.* here.

Mother argues that the department received Richard O., Sr.'s death certificate prior to May 30, 2012, and could have conducted a further inquiry. We agree with the general legal principle stated above that the department had a continuing duty to investigate any potential Indian ancestry pursuant to the ICWA. Whatever date the department received Richard O., Sr.'s death certificate, the information on that certificate indicated that his race was White, not American Indian which was a choice stated in the designated box on the certificate itself. The death certificate provided no information that would have placed the department on notice to conduct a further inquiry as to Richard O., Sr.'s potential Indian ancestry. Indeed, the death certificate was documentary evidence that Richard O., Sr. did not have any Indian ancestry.

We find that the juvenile court did not err in finding that the children did not have Indian ancestry and that the ICWA was inapplicable to this proceeding.

DISPOSITION

The orders of the juvenile court are affirmed.